



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**DIVORCE CAUSE NO. 1 OF 2010**

**R M M..... PETITIONER**

**V E R S U S**

**T O N..... RESPONDENT**

**J U D G M E N T**

The parties herein got married in 1988 and were blessed with five children. The petitioner filed the current cause seeking divorce. She testified that she is a veterinary doctor working with the Ministry of Livestock. The respondent is also a Veterinary Doctor. The marriage has not been peaceful and she used to be subjected to physical abuse. Attempts to reconcile the parties failed. According to her the marriage has irretrievably broken down and would like to have it cancelled. She is staying with the children and pays for their school fees. She moved out of the matrimonial home and built her own house at Mumias where she lives. They separated in the year 2006.

The respondent testified that the marriage has been happy and they operated two aggrovate shops. The petitioner was running one shop while he was running the other one. The petitioner used to spend from the business and started buying land and buildings. In 2007 she moved out of their house and carried her luggage. They used to live in [particulars withheld] in Nyamira County. The petitioner got employment in 1997 and things changed. He stayed with his two daughters **M** and **S** until they finished their Form Four. In 2008 he went to Mumias and found that his wife had built a four bedroomed permanent house near her parents' home. It dawned on him that there was a planned scheme for her to move out. He would like to stay with his children. He is also against the divorce.

From the evidence of the petitioner it is clear to me that she is no longer interested in the marriage. It is not the duty of the court to force couples to live together. Even if the court were not to grant the divorce still there would be no marriage as parties would still be living separately. When this matter was concluded on the 24.10.2013 the court gave the parties time to go and seek reconciliation. This judgment has taken time to be written in the hope that any of the parties could have approached the court and confirm that the parties have reconciled. I am satisfied that there exist good reasons to grant the divorce. The last born child **P** was born on the 6.11.2002. The child is now almost **12 years** old. **D** was born in November 2000 and is now almost **14 years** old. **S** is **15 years** old. The other two children are already adults. From the birth certificate it is clear to me that all the children are daughters and have been living with the petitioner. According to the respondent he used to live with the two adult daughters until they finished their secondary education. The petitioner is working and is paying school fees. The respondent is also in a position to assist in the payment of the school fees. There is no evidence that the respondent has refused totally to meet his obligation to maintain the children.

I do find that this marriage has irretrievably broken down and there is no possibility of reconciliation. The petition is granted as prayed. A decree nisi shall be issued to last for the next six months and thereafter each party shall be at liberty to apply for the decree to made absolute. There shall be no orders as to costs. Parties shall endeavour to contribute towards the upkeep and school fees of their young children.

Delivered, dated and signed at Kakamega this 26<sup>th</sup> day of June 2014

**SAID J. CHITEMBWE**

**JUDGE**